



State AMS No.: \_\_\_\_\_  
MaineDOT CSN: \_\_\_\_\_  
TEDOC No.: \_\_\_\_\_

**Local Project Agreement**  
Between the  
**Maine Department of Transportation**  
And the  
**Town of Kittery**

**Route 103 Sidewalk: MaineDOT WIN 019394.00**

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This Agreement for the above-referenced Project is made by and between the Maine Department of Transportation, an agency of Maine State Government having its headquarters on Child Street in Augusta, Maine (“the **MaineDOT**,”) and the Town of Kittery, a municipal corporation and body politic having its principal offices at 200 Rogers Road in Kittery, Maine (“the **Town**.”)

WHEREAS, the Town successfully applied for funding for the Project described herein through the MaineDOT Quality Community Program to improve pedestrian safety; and

WHEREAS, the MaineDOT selected the Project for its 2012-2013 Biennial Capital Work Plan, programming Transportation Enhancement funding for preliminary engineering work; and

WHEREAS, this Agreement sets out terms and conditions of the MaineDOT’s funding to the Town.

NOW, in consideration of the foregoing, the **MaineDOT** and the **Town** hereby agree as follows:

**ARTICLE I. DEFINITIONS**

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- A. Project: Design and other preliminary engineering work for a planned sidewalk along the northern side of State Route 103 (Whipple Road) in Kittery, Maine (“the **Project**.”) The work, planned to begin at Old Ferry Lane and continue 0.47 of one mile to Wyman Avenue, shall be performed by or for the **Town** and accepted by the **MaineDOT**.
- B. Project Coordinator: The person designated by the **Town** to administer the Project and oversee all local responsibilities. This person is the Town’s liaison to the MaineDOT.
- C. Project Manager: The person designated by the **MaineDOT** to oversee all State responsibilities. As the MaineDOT’s liaison to the Town, this person shall serve in a review and advisory capacity to ensure that all Federal and State requirements are met.

**ARTICLE II. PROJECT DEVELOPMENT**

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- A. **FUNDING**. The **MaineDOT** has approved Eighteen Thousand Dollars (**\$18,000**) for the Project, consisting of eighty percent (**80%**) from the **MaineDOT** and a twenty percent (**20%**) match from the **Town**, as shown in Article III. Project costs eligible for funding through the MaineDOT shall not exceed this amount without the MaineDOT’s written approval.
- B. **AUTHORIZATIONS**. The **Town** must receive authorization from the **MaineDOT** before starting any work on the Project. Any municipal costs incurred prior to such authorization will be *ineligible* for reimbursement and *will not* be credited toward the Town’s match.

- C. BUDGET AND SCHEDULE. Upon receiving "Notice to Proceed" from the MaineDOT, the **Town's** Project Coordinator shall review with the **MaineDOT** Project Manager the proposed scope of work, budget and schedule for the Project. Within sixty (60) days of receiving such Notice, the **Town** shall provide the MaineDOT with the following:
1. Milestones and dates that shall be used to establish a baseline schedule and measure the Town's progress.
  2. An updated line-item budget of itemized costs. Once the MaineDOT has approved the budget, expenditures may not exceed any cost category or line-item amount by more than ten percent (10%) without the **MaineDOT's** written approval.
- D. CHANGES IN SCOPE. Any change(s) to the scope of work or objectives of the Project shall be approved by the **MaineDOT**, through a Modification to this Agreement.
- E. CONSULTANT SERVICES. The **Town** may hire a consultant for design and engineering services, as follows:
1. A qualifications-based selection process must be used, pursuant to Part 172 of Title 23 of the U.S. Code of Federal Regulations (CFR), "Administration of Engineering and Design Related Service Contracts." Price cannot be a scoring factor.
  2. No contract shall be awarded without the approval of the **MaineDOT**.
  3. The most recent version of MaineDOT's *Consultant General Conditions* shall govern all design or other non-construction work.
- F. DESIGN. Design plans, specifications, estimates and contracts shall be prepared in accordance with the MaineDOT's standards and procedures. Design shall conform to applicable sections of the MaineDOT's *Highway Design Guide*, its *Standard Specifications* and its *Standard Details*. All such documents shall be submitted to the **MaineDOT** for review and approval.
- G. UTILITIES. Plans and specifications shall conform to the MaineDOT's *Utility Accommodation Policy*. The **Town** or its consultant shall coordinate all matters regarding utilities, prepare all documentation, and submit such documentation to the **MaineDOT** for review and approval.
- H. PERMITS. The **Town** or its consultant shall obtain all approvals, permits and licenses necessary to construct the Project. Copies shall be provided to the **MaineDOT**.
- I. ENVIRONMENTAL PROCESS. The **Town** or its consultant shall prepare and submit to the MaineDOT for review all required environmental documents. The **MaineDOT** shall submit to the Federal Highway Administration all documentation required under the *National Environmental Policy Act*.
- J. PUBLIC PARTICIPATION. The **Town** shall provide for public participation as necessary to meet Federal/State requirements. The MaineDOT Project Manager shall be notified of all public meetings.

K. **PROPERTY ACQUISITION.** Given that Route 103 is a State-aid road, the **MaineDOT** has primary responsibility for acquiring any property rights necessary to construct and maintain the Project. If the **MaineDOT** delegates this responsibility to the **Town**, the following process shall be followed:

1. Because this is a federally funded project, the **Town** must follow the Federal *Uniform Relocation Assistance and Real Property Acquisition Act of 1970* (49 CFR, Part 24).
2. Upon completion of the right-of-way process, the **Town** shall certify in writing to the **MaineDOT** that it has acquired all property rights.

### **ARTICLE III. COST-SHARING & REIMBURSEMENT**

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- A. **MaineDOT SHARE.** The **MaineDOT** – using Federal Highway Administration funding – shall be responsible for eighty percent (**80%**) of federally eligible Project costs, not to exceed Fourteen Thousand Four Hundred Dollars (**\$14,400**, or **80%** of **\$18,000**.)
- B. **LOCAL SHARE.** The **Town** shall be responsible for a non-Federal matching share of twenty percent (**20%**) of federally eligible costs, including its share of Project-related costs incurred by the MaineDOT as described under Paragraph C below. Accordingly, the Town's match is approximately Three Thousand Six Hundred Dollars (**\$3,600**, or **20%** of **\$18,000**.)
1. The **Town** also shall be responsible for all costs deemed ineligible for Federal funding and/or exceeding Eighteen Thousand Dollars (\$18,000), unless otherwise approved in writing by the **MaineDOT** through a fully executed Modification to this Agreement.
- C. **MAINEDOT COSTS.** All costs incurred by **MaineDOT** staff in the development and oversight of the Project shall be accounted for with Project funds. Such costs may include – without limitation – design reviews, environmental support, survey, and right-of-way support. The **Town's** share of such costs shall be reconciled and deducted from any payment due at final invoice, unless otherwise arranged between the **MaineDOT** and the **Town**.
- D. **REIMBURSEMENT.** The **MaineDOT** shall reimburse the **Town** for the Federal portion of eligible Project costs described in Paragraph A, as follows:
1. The **Town** shall bill the **MaineDOT** no more frequently than monthly for such costs, which are incurred whenever work is performed, goods and services are received, or a cash payment is made. All bills are subject to the following conditions:
    - Claims shall be submitted on the Town's billhead and reference WIN 019394.00.
    - Each invoice shall contain an itemized account of expenditures consistent with the approved Project budget required in Article II.C.2. Backup documentation and proof of payment made must accompany each invoice.
    - Each invoice must have an accumulative total by budget line item and a breakdown of the MaineDOT's and Town's shares of total costs.

- Each claim shall include a certification from the Town's Project Coordinator that all amounts claimed are correct, due and not claimed previously, and that all applicable work was performed in accordance with the terms of this Agreement.
- Any claim for less than one thousand dollars (\$1,000) shall be deferred until the next regular billing period in which at least one thousand dollars (\$1,000) is incurred or until a final invoice is submitted for reimbursement.

E. The **MaineDOT** shall recover any payment to the **Town** for any action or activity that subsequently is deemed ineligible for Federal funding. The **MaineDOT** shall have the additional remedy of withholding Project-related reimbursements to the Town.

#### **ARTICLE IV. NON-APPROPRIATION**

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A. Notwithstanding any other provision of this Agreement, the **MaineDOT** shall be released from its obligation to make payment toward the Project – and shall terminate this Agreement upon thirty (30) days' written notice to the **Town** – if any of the following occurs:

1. The MaineDOT does not receive adequate funds to support this Project; or
2. Funds otherwise programmed for this Project are de-appropriated; or
3. The MaineDOT does not receive the authority to expend funds otherwise programmed for this Project from the Maine State Legislature or Maine courts.

#### **ARTICLE V. TERMINATION AND DEFAULT**

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A. The **MaineDOT** reserves the right to terminate the payment provisions of Article III in the event of default by the **Town**, which is defined as:

1. Failure to show substantial progress – as determined by the MaineDOT Project Manager – within **18 months** of being given notice to proceed.
2. Use of Project funds for a purpose other than what is authorized by this Agreement;
3. Misrepresentation or falsification of any claim submitted for reimbursement;
4. Failure to monitor adequately the quality of work performed under this Agreement by any consultant;
5. Breach of any material provision(s) of this Agreement.

B. The **MaineDOT** shall notify the **Town** in writing within five (5) days of learning of an event leading to a claim of default. If the **Town** fails to take corrective action within fifteen (15) days of receiving notification, the **MaineDOT** may terminate this Agreement upon written notice to the Town. Upon receiving notification, the **Town** and all consultants associated with the Project shall cease work immediately and turn over to the **MaineDOT** all Project records and documentation within thirty (30) days of the effective date of such termination.

- C. If default occurs, the **MaineDOT** reserves the right to require the Town to repay any reimbursement(s) of Federal funds for Project-related work. The **Town** shall forfeit any remaining Federal funds in the Project.

#### **ARTICLE VI. RECORDS RETENTION, ACCESS & AUDIT**

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- A. **RETENTION.** All printed and electronic Project records prepared by the **Town** and its consultant(s) shall be retained for **at least five (5) years** from the date of the MaineDOT's acceptance of the Town's final claim for reimbursement in accordance with 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments." However, if any litigation, claim, negotiation, audit or other action involving such records has begun before the expiration of five (5) year period, then all records shall be retained at least until all action and resolution of all issues arising from it are complete.
- B. **ACCESS.** The **Town** and its consultant(s) shall allow authorized representatives of the State of Maine and the Federal Government to inspect and audit pertinent Project documents. Copies of requested documents shall be furnished at no cost.
- C. **AUDIT.** Audits shall meet the "Generally Accepted Government Auditing Standards" (GAGAS).

#### **ARTICLE VII. GENERAL PROVISIONS**

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- A. **LAWS AND REGULATIONS.** All activities conducted pursuant to this Agreement shall comply with applicable laws and regulations, including without limitation: Title 23 in the United States Code (USC) for statutory law and Title 23 in the Code of Federal Regulations (CFR) for administrative law.
- B. **INDEPENDENT CAPACITY.** When carrying out the provisions of this Agreement, the **Town**, its employees, contractors, consultants and/or agents are not acting as employees or agents of the **MaineDOT**.
- C. **INDEMNIFICATION.** To the extent allowed by law, the **Town** shall indemnify, defend and hold harmless the **MaineDOT** and any of its officers, employees, agents, and assigns from and against any and all claims, liability or expenses on account of bodily injury or property damage – including but not limited to reasonable attorney's fees and litigation costs ("Claims") – to the extent such Claims are caused, or alleged to have been caused, by negligent acts or omissions of the **Town** or any of its officers, employees, agents, representatives, supervisors, or consultants in connection with the performance of its obligations under this Agreement. Nothing herein is intended, or shall be construed, to waive any right, defense, privilege, immunity or limitation of liability that may be available to the Parties, or any of their respective officers, agents or employees, pursuant to the Maine Tort Claims Act (14 MRSA §8101 et seq.), the Eleventh Amendment to the United States Constitution, or any other provision of law. *This provision shall survive any termination or expiration of this Agreement.*

D. FLOW DOWN. All contracts between the **Town** and any consultant or other third party shall contain or incorporate by reference all applicable provisions of this Agreement.

E. EQUAL EMPLOYMENT OPPORTUNITY. The **Town** shall comply with applicable EEO requirements:

1. During the performance of any work undertaken pursuant to this Agreement, the **Town** shall not discriminate against any employee or applicant for employment because of race, color, religious creed, gender, national origin, ancestry, age, sexual orientation, or disability unless related to a bona fide occupational qualification. The **Town** shall take *affirmative action* to ensure that all such qualified applicants are employed and that all such employees are treated without regard to their race, color, religious creed, gender, national origin, ancestry, age, sexual orientation, or disability during any period of employment under this Agreement. Such action shall include, without limitation: employment, upgrading, demotions, transfers, recruitment, layoffs or terminations, rates of pay or other forms of compensation, and selection for training and apprenticeships. The **Town** shall post – or cause to be posted – prominently in conspicuous places readily accessible to all employees and applicants for such employment notices setting forth the provisions of this paragraph.
2. The **Town** shall include all of the foregoing equal employment opportunity provisions in any contract for services under this Agreement so that the provisions are binding upon each consultant.

F. CHANGES. Any change(s) to the terms of this Agreement shall be approved by the **MaineDOT**, through a fully executed Modification to this Agreement.

G. THIRD-PARTY TRANSFERENCE. The **Town** shall not sublet, sell, transfer, assign or otherwise dispose of this Agreement or any portion of it without the written consent of the **MaineDOT**. In no case shall any such action release the **Town** from liability under this Agreement.

H. The Parties further acknowledge and agree that:

1. Neither the **Town** nor the **MaineDOT** shall be bound by any previous statement, correspondence, agreement or representation not expressly contained herein.
2. This Agreement is made and shall be construed under the laws of the State of Maine.
3. If any clause, section or provision is held to be invalid or unenforceable, that shall not affect the entire agreement, and the Parties shall negotiate a new clause, section or provision.

## **ARTICLE VIII. EXPIRATION**

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All provisions of this Agreement – except for Article VI.A (records) and Article VII.C (indemnification) – shall expire upon satisfactory completion of the Project or **two (2) years** from the date of MaineDOT's signature, whichever occurs first, unless otherwise modified in writing by the parties to this Agreement.

## ARTICLE IX. APPROVAL

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A. Debarment. By signing this Agreement, the **Town** certifies – to the best of its knowledge and belief – that it and its employees, agents and/or representatives associated with the Project:

1. Are not now debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from eligible in this transaction by any Federal or State agency;
2. Have not within the previous three (3) years been criminally convicted or had a civil judgment rendered against them – and are not now criminally or civilly charged – in connection with any of the following:
  - Obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; or
  - Violating Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
3. Have not within a 3-year period preceding this agreement had one or more public transactions (Federal, State or local) terminated for cause or default.

B. If the Town is unable to certify to any of the preceding statements in this Article IX, the **Town** shall attach an explanation to this Agreement.

C. The **Town** agrees that it will not hire a consultant or contractor who is now debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or State agency.

D. Municipal authorization. The undersigned municipal representative assures that the **Town Council** of Kittery, Maine, has taken all steps necessary and lawful to approve the Project and the Town's entry into this Agreement, has appropriated or authorized the use of any necessary funds, and has further authorized said representative to execute this Agreement.

**IN WITNESS WHEREOF**, the **MaineDOT** and the **Town** have executed this Agreement effective on the day and date last signed.

**Town of Kittery**

**Maine Department of Transportation**

By: \_\_\_\_\_  
**Jonathan L. Carter, Town Manager**

By: \_\_\_\_\_  
**Joyce Noel Taylor, Director,**  
Bureau of Project Development

Date: \_\_\_\_\_

Date: \_\_\_\_\_